

**Compliance with Migratory Bird MOU**  
**(FS Agreement # 08-MU-1113-2400-264)**

**Forest Procedures for NEPA documentation**  
**Lover's Canyon Project**

On December 12, 2008, a Memorandum of Understanding between the U.S. Department of Agriculture Forest Service (USFS) and the U.S. Fish and Wildlife Service (FWS) to promote the conservation of migratory birds (MOU) was issued. Section D3 of the MOU directs the USFS, stating, "Within the NEPA process, evaluate the effects of agency action on migratory birds, focusing first on species of management concern along with their priority habitats and key risk factors." For the Klamath National Forest (Forest), the migratory bird species of management concern are those bird species listed under the Endangered Species Act as Threatened (T) or Endangered (E), those species designated by the Regional Forester as Sensitive Species (S)<sup>1</sup> and those species listed under Standard and Guideline 8-21 through 8-34 of the Klamath Land and Resource Management Plan (Forest Plan) as Management Indicator Species (MIS) for project level assessment.<sup>2</sup> The species are listed in Tables 1 and 2.

**Table 1. Species listed as Threatened, Endangered, or Sensitive**

Common Name	Scientific Name	Forest Management Concern	FWS BCC	CA State Listed	CA State Species of Concern
Northern spotted owl	<i>Strix occidentalis</i>	T	-	-	-
Marbled murrelet	<i>Brachyramphus marmoratus</i>	T	Yes	Yes	-
Bald Eagle	<i>Haliaeetus leucocephalus</i>	S	-	Yes	-
Northern goshawk	<i>Accipiter gentilis</i>	S	Yes	-	Yes
Willow flycatcher	<i>Empidonax trailii</i>	S	-	Yes	-
Greater sandhill crane	<i>Grus canadensis tabida</i>	S	-	Yes	-

**Table 2. Species listed as Management Indicator for Project-level Assessment**

Common Name	Scientific Name	Biological Community or habitat feature	FWS BCC	State Species of Concern
Downy woodpecker	<i>Picoides pubescens</i>	Snags	-	-
Red breasted sapsucker	<i>Sphyrapicus ruber</i>	Snags	-	-
Hairy woodpecker	<i>Picoides villosus</i>	Snags	-	-
Black backed woodpecker	<i>Picoides arcticus</i>	Snags	-	-
White-headed woodpecker	<i>Picoides albolarvatus</i>	Snags, Mature pine	Yes	-
Pileated woodpecker	<i>Dryocopus Pileatus</i>	Snags	-	-
Vaux's swift	<i>Chaetura vuaxi</i>	Snags	Yes	Yes

<sup>1</sup> Several of these species are included in the FWS's *Birds of Conservation Concern* (FWS BBC), the State of California Threatened and Endangered Species (CA State Listed), and the California Bird Species of Special Concern (CA State Species of Concern).

<sup>2</sup> Several of these species are also identified by the FWS as Birds of Conservation Concern and/or as Species of Special Concern.

Common Name	Scientific Name	Biological Community or habitat feature	FWS BCC	State Species of Concern
Flammulated owl	<i>Otus flammeolus</i>	Mature pine	Yes	-
Pinyon jay	<i>Gymnorhinus cyanocephalus</i>	Mature pine	-	-
Brown Creeper	<i>Certhia americana</i>	Mature pine	-	-
Pygmy nuthatch	<i>Sitta pusilla</i>	Mature pine	-	-
Acorn woodpecker	<i>Melanerpes formicivorus</i>	Hardwoods	-	-
American dipper	<i>Cynclus platensis</i>	River/Stream	-	-
Swainson's hawk	<i>Buteo swainson</i>	Grassland/Shrub-steppe	-	-
Sage thrasher	<i>Oreoscoptes montanus</i>	Grassland/Shrub-steppe	-	-
Loggerhead shrike	<i>Lanius Ludovicianus</i>	Grassland/Shrub-steppe	Yes	Yes
Burrowing owl	<i>Athene cunicularia</i>	Grassland/Shrub-steppe	Yes	Yes

The MOU expands on the direction for the NEPA process in Section D3 of the MOU to say, “to the extent practicable:

- a. Evaluate and balance long-term benefits of projects against any short- or long term adverse effects when analyzing, disclosing, and mitigating the effects of actions.
- b. Pursue opportunities to restore or enhance the composition, structure, and juxtaposition of migratory bird habitats in the project area.
- c. Consider approaches, to the extent practicable, for identifying and minimizing take that is incidental to otherwise lawful activities, including such approaches as:
  1. Altering the season of activities to minimize disturbances during the breeding season;
  2. Retaining snags for nesting structures where snags are underrepresented;
  3. Retaining the integrity of breeding sites, especially those with long histories of use and;
  4. Giving due consideration to key wintering areas, migration routes, and stopovers.
  5. Minimizing or preventing the pollution or detrimental alteration of the environments utilized by migratory birds whenever practical by assessing information on environmental contaminants and other stressors relevant to migratory bird conservation.
- d. Coordinate with the appropriate FWS Ecological Services office when planning projects that are likely to have a negative effect on migratory bird populations. Cooperate in developing approaches to minimize negative impacts and maximize benefits to migratory birds.”

**Per MOU item D3a.** The MOU recognizes that, “Within the National Forest System, conservation of migratory birds focuses on providing a diversity of habitat conditions at multiple spatial scales...” At the Forest scale, the land allocations in the Forest Plan are designed to maintain a variety of habitat types, which would provide habitat for

migratory birds that may use the project area at some point during the year. “Land allocations and management direction are designed to maintain species, community and genetic diversity. Diversity will be provided through a mixture of vegetative types and seral stages” (Forest Plan Record of Decision). The Forest Plan has provisions that provide for biological diversity on the Forest (EIS pages 4-38 through 4-91) including designations for Wilderness, Research Natural Areas, the Butte Valley National Grassland, Special Habitats (includes Late Successional Reserves, Bald Eagle Management Areas, and Peregrine Falcon Management Areas), a Managed Wildlife Area, Goshawk Management Areas, and Riparian Reserves. The designations and standards and guidelines for Late Successional Reserve and Riparian Reserve land allocations are designed to ensure the viability of species that use late-seral and aquatic habitats. A General Forest land allocation (also called Matrix or regulated land) is intended to provide for early and mid-seral habitats which are also needed by some migratory bird species. At the project level, the Forest Plan identified standards and guidelines to address the diversity of major biological communities and priority habitat (such as snags and riparian vegetation) found on the Forest and identified guidance for assessing impacts to priority habitat for MIS.

For the **Lover’s Canyon Project**, the long-term benefits to species (and their key habitats) listed in Table 1 and 2 are maintaining key migratory bird habitat components by the reduction of fuels loading, re-establishment of mosaic forest habitats, and improvement of stand condition, thereby reducing the risk of further, stand replacing wildfire (See Lover’s Canyon Project Wildlife Specialist Report, Biological Evaluation and MIS Report). The short- and long-term effects to bird species (and their key habitats) listed in Table 1 and 2 are not determined to adversely affect with the implementation of Alternatives 2 and 3 of the proposed project.

**Per MOU item D3b.** Although not a purpose and need for this action, there are benefits to the migratory bird species of management concern as described under item 3a.

**Per MOU item D3c.** “Take” in this MOU has the same meaning as defined in 50 CFR § 10.12 and means to pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to pursue, hunt, shoot, wound, kill, trap, capture, or collect. “Take” is incidental to this otherwise lawful action and has been minimized by incorporating Resource Protection Measures (as Project Design Features) into the proposed action:

**Per MOU item D3d.** This Lover’s Canyon Project is not likely to have a negative effect on migratory bird populations as summarized in this report and further described in the Lover’s Canyon Project Wildlife Specialist Report, Biological Evaluation, and MIS Report.

Based on the results of the project changes in the post-damage assessment of the winter 2017 landslides for the Lover’s Canyon area, there is no measurable change in migratory bird habitats. New landslides within the project area total about 29 acres of active features. Approximately 15 acres of these landslides overlap with proposed treatment units. The landslides did not measurably affect migratory bird habitat. The changes proposed in the 15 acres of overlap are less than what was originally analyzed in the project Migratory Songbird analysis.

/s/ Sam Cuenca

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